

SENATE BILL REPORT

SB 6004

As Reported By Senate Committee On:
Judiciary, February 28, 2007

Title: An act relating to exceptional sentences.

Brief Description: Concerning exceptional sentences.

Sponsors: Senators Oemig, Kline and Hargrove.

Brief History:

Committee Activity: Judiciary: 2/23/07, 2/28/07 [DPS].

SENATE COMMITTEE ON JUDICIARY

Majority Report: That Substitute Senate Bill No. 6004 be substituted therefor, and the substitute bill do pass.

Signed by Senators Kline, Chair; Tom, Vice Chair; McCaslin, Ranking Minority Member; Carrell, Hargrove, Murray, Roach and Weinstein.

Staff: Lidia Mori (786-7755)

Background: The U.S. Supreme Court case of *Blakely v Washington*, decided in 2004, held that a criminal defendant has a Sixth Amendment right to have a jury determine beyond a reasonable doubt any aggravating fact, other than the fact of a prior conviction, that is used to impose greater punishment than the standard sentencing range. In 2005, the Washington State Legislature passed legislation that was intended to bring the state sentencing reform act into accord with the decision in *Blakely*. Under the new procedure created by the legislation, at any time prior to trial or entry of a guilty plea, if substantial rights of the defendant are not prejudiced, the state may give notice that it is seeking a sentence above the standard sentencing range and the notice must state the aggravating circumstances upon which the requested sentence will be based. The facts supporting aggravating circumstances must be proved to a jury beyond a reasonable doubt.

In *State v. Hughes*, the Washington State Supreme Court held that there is no inherent authority to empanel a jury to determine whether an exceptional sentence should be imposed. The court emphasized that it has consistently held that the fixing of legal punishments for criminal offenses is a legislative function.

In the recent case of *Pillatos*, the Washington State Supreme Court ruled that changes the Legislature made in 2005 in response to the *Blakely* decision do not apply to cases where trials

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have already begun or guilty pleas have already been entered. This would include cases that have been remanded for resentencing because of the *Blakely* decision.

Summary of Bill: In any case where a new trial or new sentencing hearing is required and an exceptional sentence above the standard range was imposed, prior to April 15, 2005, the superior court may impanel a jury to consider alleged aggravating circumstances that were relied upon by the superior court in imposing the previous sentence. The jury may be impaneled for the new trial or the new sentencing hearing.

EFFECT OF CHANGES MADE BY RECOMMENDED SUBSTITUTE AS PASSED COMMITTEE (Judiciary): Only the aggravating circumstances relied upon by a superior court and listed in RCW 9.94A.535(3) for imposition of an exceptional sentence above the standard range are allowed to be considered by a jury impaneled by the superior court in situations where a new trial or new sentencing hearing is required.

Appropriation: None.

Fiscal Note: Not requested.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: PRO: In the *Hughes* case, the court ruled that there was no inherent authority for a court to impanel a jury. Washington passed legislation in 2005 to address the *Blakely* decision and now the *Pillatos* decision said that the legislation doesn't apply to cases already in progress. SB 6004 seeks to be retroactive and it is procedurally very necessary. This bill will plug a gap left by legislation passed in 2005. It will address a group of cases that were litigated prior to the *Blakely* decision. Another concern involves the question of whether *Blakely* will be found to be retroactive; so far it has not, but this could change.

CON: For the cases that this bill will affect, the courts and juries should be limited to the exclusive list of aggravating factors that are contained in the *Blakely* fix. This bill is not necessary, cases that have been remanded have already been addressed.

Persons Testifying: PRO: Senator Oemig, prime sponsor; Jim Whisman, Washington Association of Prosecuting Attorneys.

CON: Suzanne Elliot, Washington Association of Criminal Defense Lawyers.